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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Armando Antonio Marroquin,
Plaintiff,
vs.
Jim McDonald, et al.,
Defendants.

No. CV 13-1761-PHX-DGC (LOA)

ORDER

Plaintiff Armando Antonio Marroquin, who is currently confined in the La Palma Correctional Center in Eloy, Arizona, filed this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff presents claims stemming from his LPCC incarceration as well as his prior incarceration at the Florence Correctional Center in Florence, Arizona (Doc. 1). Defendants Ward and Hudson—FCC employees—move to dismiss the claims against them on the ground that they are barred by the statute of limitations (Doc. 13).

The Court will grant the motion.

I. Background

In Counts Two and Three of his Complaint, Plaintiff alleged that in January 2009, Ward and Hudson told inmates working in the prison kitchen that Plaintiff had filed a grievance against the other inmates. Plaintiff alleged that Defendants’ actions were taken in retaliation for a grievance Plaintiff filed against Ward. Defendants actions led to multiple

1 threats against Plaintiff and ended in an assault on Plaintiff by several inmates on July 9,
2 2009, which caused Plaintiff serious injury.

3 Plaintiff filed suit against Ward and Hudson in March 2010, presenting deliberate
4 indifference and retaliation claims (10-CV-0596-PHX-DGC (LOA)). Those claims were
5 dismissed in October 2010 for failure to exhaust administrative remedies (Doc. 31, 10-CV-
6 0596-PHX-DGC (LOA)). Plaintiff filed this action again presenting his deliberate
7 indifference and retaliation claims on August 27, 2013.¹

8 **II. Motion to Dismiss**

9 **A. Statute of Limitations**

10 When the statute of limitations forms the basis of a motion to dismiss for failure to
11 state a claim, the motion can be granted “if the assertions of the complaint, read with the
12 required liberality, would not permit the plaintiff to prove that the statute was tolled.” *Jablon*
13 *v. Dean Witter & Co.*, 614 F.2d 677, 682 (9th Cir. 1980); *see also TwoRivers v. Lewis*, 174
14 F.3d 987, 991 (9th Cir. 1999). Although courts will not normally look beyond the pleadings
15 in resolving a Rule 12(b)(6) motion, *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th
16 Cir.2001), a “court may consider material that the plaintiff properly submitted as part of the
17 complaint or, even if not physically attached to the complaint, material that is not contended
18 to be inauthentic and that is necessarily relied upon by the plaintiff’s complaint.” *Id.* The
19 court may consider matters of public record, including pleadings, orders, and other papers
20 filed with the court. *Mack v. South Bay Beer Distributors*, 798 F.2d 1279, 1282 (9th
21 Cir.1986) (*abrogated on other grounds by Astoria Federal Savings and Loan Ass’n v.*
22 *Solimino*, 501 U.S. 104 (1991)).

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25 ¹ Upon screening pursuant to 28 U.S.C. § 1915A(a), the Court dismissed Counts One,
26 Five, Six, Eight, Nine, Ten, and Eleven; the portion of Count Two relating to grievances and
27 access to the courts; and the portions of Count Seven not related to copying documents. The
28 Court also dismissed Defendants McDonald, Partain, Minnieweather, Williams, Wilson, and Vasquez.

1 Section 1983 of Title 42 of the U.S.C. does not include its own statute of limitations.
2 *TwoRivers*, 174 F.3d at 991. Therefore, federal courts apply the statute of limitations
3 governing personal injury claims in the forum state. *Wilson v. Garcia*, 471 U.S. 261, 280
4 (1985); *TwoRivers*, 174 F.3d at 991. In Arizona, the limitations period for personal injury
5 claims is two years. *TwoRivers*, 174 F.3d at 991; *see also* Ariz. Rev. Stat. § 12-542
6 (providing that actions for personal injury must be commenced within two years after the
7 cause of action accrues).

8 Although the statute of limitations applicable to § 1983 claims is borrowed from state
9 law, federal law continues to govern when a § 1983 claim accrues. *Wallace v. Kato*, 549
10 U.S. 384, 388 (2007); *TwoRivers*, 174 F.3d at 991. Under federal law, a claim accrues “when
11 the plaintiff knows or has reason to know of the injury which is the basis of the action.”
12 *TwoRivers*, 174 F.3d at 991; *Kimes v. Stone*, 84 F.3d 1121, 1128 (9th Cir. 1996).

13 **B. Analysis**

14 Here, Plaintiff alleges that Defendants intentionally placed him at risk in January
15 2009, which resulted in a serious assault on July 9, 2009. These allegations also make clear
16 that Plaintiff was contemporaneously aware of Defendants’ actions and their consequences.
17 *Cabrera v. City of Huntington Park*, 159 F.3d 374, 379 (9th Cir. 1998) (Section 1983 claim
18 accrues when the plaintiff knows or has reason to know of the injury which is the basis of his
19 action). As a result, absent tolling, the limitations period expired no later than July 9, 2011,
20 which was over two years before Plaintiff filed his initial Complaint in this action on August
21 27, 2013 (Doc. 1).

22 Plaintiff appears to argue that his prior attempts at litigation should toll the statute of
23 limitations. He explains that in addition to his 2010 civil action in this Court, he filed suit
24 in the Northern District of California upon the advice of a law library clerk and other
25 inmates. Plaintiff also alleges that he appealed the Court’s dismissal of the 2010 civil action,
26 which took a year to adjudicate. But Plaintiff’s prior litigation does not present a legally
27 cognizable basis for tolling. *Barber v. Nelson*, 2009 WL 449250, at *4 (Ariz. Ct. App. Feb.
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1 24, 2009). Nor does Plaintiff's bare assertion that he was unaware of the statute of
2 limitations.

3 The Court recognizes, however, that "the applicable statute of limitations must be
4 tolled while a prisoner *completes* the mandatory exhaustion process." *Brown v. Valoff*, 422
5 F.3d 926, 943 (9th Cir. 2005) (emphasis added). But as identified in the 2010 civil action,
6 the entire prison grievance process at FCC takes no more than 90 days to complete (10-CV-
7 0596-PHX-DGC (LOA), Doc. 17, Ex. 1, Partain Aff. ¶¶ 14-26). Therefore, even excluding
8 the maximum time—or triple the maximum—for completing the grievance process, such
9 tolling does not alter the conclusion that the statute expired nearly two years before Plaintiff
10 filed this action. Therefore, the claims against Ward and Hudson are time-barred and must
11 be dismissed.

12 **IT IS ORDERED:**

13 (1) The reference to the Magistrate Judge is withdrawn as to Defendants' Motion
14 to Dismiss (Doc. 13).

15 (2) Defendants' Motion to Dismiss (Doc. 13) is **granted**; Counts Two and Three
16 against Ward and Hudson are **dismissed** as time-barred. Ward and Hudson are dismissed
17 from this action.

18 (3) The remaining claims are Count Four against Wilkinson and Count Seven
19 against Fernandez-Carr and Prince.

20 DATED this 19th day of June, 2014.

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25 David G. Campbell
26 United States District Judge
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